



**SENATE SUBSTITUTE AMENDMENT 1,
TO 1997 SENATE BILL 280**

March 4, 1998 - Offered by Senator DRZEWIECKI.

1 **AN ACT to amend** 342.12 (4) (a), 342.12 (4) (b), 343.10 (5) (a) 3., 343.23 (2) (b),
2 343.30 (1q) (b) 3., 343.30 (1q) (b) 4., 343.30 (1q) (b) 5., 343.305 (10) (b) 3., 343.305
3 (10) (b) 4., 343.305 (10) (b) 5., 343.305 (10m), 343.31 (3) (bm) 3., 343.31 (3) (bm)
4 4., 343.31 (3) (bm) 5., 346.65 (2) (b), 346.65 (2) (c), 346.65 (2) (d), 346.65 (2) (e),
5 346.65 (2c), 346.65 (2j) (b), 346.65 (2j) (c), 346.65 (2w), 346.65 (6) (a) 1., 346.65
6 (6) (a) 2., 346.65 (6) (a) 2m., 346.65 (6) (d), 940.09 (1d) and 940.25 (1d) of the
7 statutes; **relating to:** the counting of convictions, suspensions and revocations
8 related to driving while under the influence of an intoxicant and providing a
9 penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

10 **SECTION 1.** 342.12 (4) (a) of the statutes is amended to read:
11 342.12 (4) (a) The district attorney shall notify the department when he or she
12 files a criminal complaint against a person who has been arrested for violating s.

1 346.63 (1) or (2), 940.09 (1) or 940.25 and who has 2 or more prior convictions,
2 suspensions or revocations ~~within a 10-year period~~, as counted under s. 343.307 (1).
3 The department may not issue a certificate of title transferring ownership of any
4 motor vehicle owned by the person upon receipt of a notice under this subsection until
5 the court assigned to hear the criminal complaint issues an order permitting the
6 department to issue a certificate of title.

7 **SECTION 2.** 342.12 (4) (b) of the statutes is amended to read:

8 342.12 (4) (b) The department may not issue a certificate of title transferring
9 ownership of any motor vehicle owned by a person upon receipt of a notice of intent
10 to revoke the person's operating privilege under s. 343.305 (9) (a), if the person has
11 2 or more prior convictions, suspensions or revocations ~~within a 10-year period~~, as
12 counted under s. 343.307 (1), until the court assigned to the hearing under s. 343.305
13 (9) issues an order permitting the department to issue a certificate of title.

14 **SECTION 3.** 343.10 (5) (a) 3. of the statutes is amended to read:

15 343.10 (5) (a) 3. If the applicant has 2 or more prior convictions, suspensions
16 or revocations, as counted under s. 343.307 (1), the occupational license of the
17 applicant ~~may~~ shall restrict the applicant's operation under the occupational license
18 to vehicles that are equipped with a functioning ignition interlock device as provided
19 if the court has ordered under s. 346.65 (6) (a) 1. that a motor vehicle owned by the
20 person be equipped with an ignition interlock device. A person to whom a restriction
21 under this subdivision applies violates that restriction if he or she requests or
22 permits another to blow into an ignition interlock device or to start a motor vehicle
23 equipped with an ignition interlock device for the purpose of providing the person an
24 operable motor vehicle without the necessity of first submitting a sample of his or her
25 breath to analysis by the ignition interlock device. If the occupational license

1 restricts the applicant's operation to a vehicle that is equipped with an ignition
2 interlock device, the applicant shall be liable for the reasonable costs of equipping
3 the vehicle with the ignition interlock device.

4 **SECTION 4.** 343.23 (2) (b) of the statutes, as affected by 1995 Wisconsin Act 184,
5 is amended to read:

6 343.23 (2) (b) The information specified in par. (a) must be filed by the
7 department so that the complete operator's record is available for the use of the
8 secretary in determining whether operating privileges of such person shall be
9 suspended, revoked, canceled or withheld in the interest of public safety. The record
10 of suspensions, revocations and convictions that would be counted under s. 343.307
11 (2) and shall be maintained for 10 years, except that if there are 2 or more
12 suspensions, revocations or convictions within any 10-year period, the record shall
13 be maintained permanently. The record of convictions for disqualifying offenses
14 under s. 343.315 (2) (h) shall be maintained for at least 10 years. The record of
15 convictions for disqualifying offenses under s. 343.315 (2) (f) shall be maintained for
16 at least 3 years. The record of convictions for disqualifying offenses under s. 343.315
17 (2) (a) to (e) shall be maintained permanently, except that 5 years after a licensee
18 transfers residency to another state such record may be transferred to another state
19 of licensure of the licensee if that state accepts responsibility for maintaining a
20 permanent record of convictions for disqualifying offenses. Such reports and records
21 may be cumulative beyond the period for which a license is granted, but the secretary,
22 in exercising the power of suspension or revocation granted under s. 343.32 (2) may
23 consider only those reports and records entered during the 4-year period
24 immediately preceding the exercise of such power of suspension or revocation.

25 **SECTION 5.** 343.30 (1q) (b) 3. of the statutes is amended to read:

1 343.30 (1q) (b) 3. Except as provided in subd. 4m., if the number of convictions,
2 suspensions and revocations within a ~~5-year~~ 10-year period equals 2, the court shall
3 revoke the person's operating privilege for not less than one year nor more than 18
4 months. After the first 60 days of the revocation period, the person is eligible for an
5 occupational license under s. 343.10 if he or she has completed the assessment and
6 is complying with the driver safety plan ordered under par. (c).

7 **SECTION 6.** 343.30 (1q) (b) 4. of the statutes is amended to read:

8 343.30 (1q) (b) 4. Except as provided in subd. 4m., if the number of convictions,
9 suspensions and revocations ~~within a 10-year period~~ equals 3 or more, the court
10 shall revoke the person's operating privilege for not less than 2 years nor more than
11 3 years. After the first 90 days of the revocation period, the person is eligible for an
12 occupational license under s. 343.10 if he or she has completed the assessment and
13 is complying with the driver safety plan ordered under par. (c).

14 **SECTION 7.** 343.30 (1q) (b) 5. of the statutes is amended to read:

15 343.30 (1q) (b) 5. The ~~5-year or 10-year~~ time period under this paragraph shall
16 be measured from the dates of the refusals or violations which resulted in the
17 suspensions, revocations or convictions.

18 **SECTION 8.** 343.305 (10) (b) 3. of the statutes is amended to read:

19 343.305 (10) (b) 3. Except as provided in subd. 4m., if the number of convictions,
20 suspensions and revocations ~~in a 5-year~~ within a 10-year period equals 2, the court
21 shall revoke the person's operating privilege for 2 years. After the first 90 days of the
22 revocation period, the person is eligible for an occupational license under s. 343.10
23 if he or she has completed the assessment and is complying with the driver safety
24 plan.

25 **SECTION 9.** 343.305 (10) (b) 4. of the statutes is amended to read:

1 343.305 (10) (b) 4. Except as provided in subd. 4m., if the number of convictions,
2 suspensions and revocations in a 10-year period equals 3 or more, the court shall
3 revoke the person's operating privilege for 3 years. After the first 120 days of the
4 revocation period, the person is eligible for an occupational license under s. 343.10
5 if he or she has completed the assessment and is complying with the driver safety
6 plan.

7 **SECTION 10.** 343.305 (10) (b) 5. of the statutes is amended to read:

8 343.305 (10) (b) 5. The ~~5-year or 10-year~~ time period under this paragraph
9 shall be measured from the dates of the refusals or violations which resulted in
10 revocations or convictions.

11 **SECTION 11.** 343.305 (10m) of the statutes is amended to read:

12 343.305 (10m) REFUSALS; SEIZURE, IMMOBILIZATION OR IGNITION INTERLOCK OF A
13 MOTOR VEHICLE. If the person whose operating privilege is revoked under sub. (10)
14 has 2 or more prior convictions, suspensions or revocations, as counted under s.
15 343.307 (1), ~~within a 10-year period~~, the procedure under s. 346.65 (6) shall be
16 followed regarding the immobilization or seizure and forfeiture of a motor vehicle
17 owned by the person or the equipping of a motor vehicle owned by the person with
18 an ignition interlock device.

19 **SECTION 12.** 343.31 (3) (bm) 3. of the statutes is amended to read:

20 343.31 (3) (bm) 3. Except as provided in subd. 4m., if the number of
21 suspensions, revocations and convictions within a ~~5-year~~ 10-year period equals 2,
22 the department shall revoke the person's operating privilege for not less than one
23 year nor more than 18 months. If an Indian tribal court in this state revokes the
24 person's privilege to operate a motor vehicle on tribal lands for not less than one year
25 nor more than 18 months for the conviction specified in par. (bm) (intro.), the

1 department shall impose the same period of revocation. After the first 60 days of the
2 revocation period, the person is eligible for an occupational license under s. 343.10.

3 **SECTION 13.** 343.31 (3) (bm) 4. of the statutes is amended to read:

4 343.31 (3) (bm) 4. Except as provided in subd. 4m., if the number of
5 suspensions, revocations and convictions ~~within a 10-year period~~ equals 3 or more,
6 the department shall revoke the person's operating privilege for not less than 2 years
7 nor more than 3 years. If an Indian tribal court in this state revokes the person's
8 privilege to operate a motor vehicle on tribal lands for not less than 2 years nor more
9 than 3 years for the conviction specified in par. (bm) (intro.), the department shall
10 impose the same period of revocation. After the first 90 days of the revocation period,
11 the person is eligible for an occupational license under s. 343.10.

12 **SECTION 14.** 343.31 (3) (bm) 5. of the statutes is amended to read:

13 343.31 (3) (bm) 5. The ~~5-year or 10-year~~ time period under this paragraph
14 shall be measured from the dates of the refusals or violations which resulted in the
15 suspensions, revocations or convictions.

16 **SECTION 15.** 346.65 (2) (b) of the statutes is amended to read:

17 346.65 (2) (b) Except as provided in par. (f), shall be fined not less than \$300
18 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months
19 if the total number of suspensions, revocations and convictions counted under s.
20 343.307 (1) equals 2 ~~in a 5-year~~ within a 10-year period. Suspensions, revocations
21 or convictions arising out of the same incident or occurrence shall be counted as one.

22 **SECTION 16.** 346.65 (2) (c) of the statutes is amended to read:

23 346.65 (2) (c) Except as provided in par. (f), shall be fined not less than \$600
24 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one
25 year in the county jail if the total number of suspensions, revocations and convictions

1 counted under s. 343.307 (1) equals 3 in a 10-year period, except that suspensions,
2 revocations or convictions arising out of the same incident or occurrence shall be
3 counted as one.

4 **SECTION 17.** 346.65 (2) (d) of the statutes is amended to read:

5 346.65 (2) (d) Except as provided in par. (f), shall be fined not less than \$600
6 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one
7 year in the county jail if the total number of suspensions, revocations and convictions
8 counted under s. 343.307 (1) equals 4 in a 10-year period, except that suspensions,
9 revocations or convictions arising out of the same incident or occurrence shall be
10 counted as one.

11 **SECTION 18.** 346.65 (2) (e) of the statutes is amended to read:

12 346.65 (2) (e) Except as provided in par. (f), shall be fined not less than \$600
13 nor more than \$2,000 and imprisoned for not less than 6 months nor more than one
14 year in the county jail 5 years if the total number of suspensions, revocations and
15 convictions counted under s. 343.307 (1) equals 5 or more in a 10-year period, except
16 that suspensions, revocations or convictions arising out of the same incident or
17 occurrence shall be counted as one.

18 **SECTION 19.** 346.65 (2c) of the statutes is amended to read:

19 346.65 (2c) In sub. (2) (b) to (e), the ~~5-year or 10-year~~ time period shall be
20 measured from the dates of the refusals or violations that resulted in the revocation
21 or convictions. If a person has a suspension, revocation or conviction for any offense
22 under a local ordinance or a state statute of another state that would be counted
23 under s. 343.307 (1), that suspension, revocation or conviction shall count as a prior
24 suspension, revocation or conviction under sub. (2) (b) to (e).

25 **SECTION 20.** 346.65 (2j) (b) of the statutes is amended to read:

1 346.65 (2j) (b) Except as provided in par. (d), shall be fined not less than \$300
2 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months
3 if the total of prior convictions, suspension and revocations counted under s. 343.307
4 (2) equals 2 ~~in a 5-year~~ within a 10-year period.

5 **SECTION 21.** 346.65 (2j) (c) of the statutes is amended to read:

6 346.65 (2j) (c) Except as provided in par. (d), shall be fined not less than \$600
7 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one
8 year in the county jail if the total of prior convictions, suspensions and revocations
9 counted under s. 343.307 (2) equals 3 or more ~~in a 10-year~~ period.

10 **SECTION 22.** 346.65 (2w) of the statutes is amended to read:

11 346.65 (2w) In determining the number of prior convictions for purposes of sub.
12 (2j), the court shall count suspensions, revocations and convictions that would be
13 counted under s. 343.307 (2). Revocations, suspensions and convictions arising out
14 of the same incident or occurrence shall be counted as one. ~~The 5-year or 10-year~~
15 time period shall be measured from the dates of the refusals or violations which
16 resulted in the revocation, suspension or convictions. If a person has a suspension,
17 revocation or conviction for any offense that is counted under s. 343.307 (2), that
18 suspension, revocation or conviction shall count as a prior suspension, revocation or
19 conviction under this section.

20 **SECTION 23.** 346.65 (6) (a) 1. of the statutes is amended to read:

21 346.65 (6) (a) 1. Except as provided in this paragraph, the court may order a
22 law enforcement officer to seize a motor vehicle, or, if the motor vehicle is not ordered
23 seized, shall order a law enforcement officer to equip the motor vehicle with an
24 ignition interlock device or immobilize any motor vehicle owned by the person whose
25 operating privilege is revoked under s. 343.305 (10) or who committed a violation of

1 s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25 (1) (a) or (b) if
2 the person whose operating privilege is revoked under s. 343.305 (10) or who is
3 convicted of the violation has 2 prior suspensions, revocations or convictions ~~within~~
4 ~~a 10-year period~~ that would be counted under s. 343.307 (1). The court shall not
5 order a motor vehicle equipped with an ignition interlock device or immobilized if
6 that would result in undue hardship or extreme inconvenience or would endanger
7 the health and safety of a person.

8 **SECTION 24.** 346.65 (6) (a) 2. of the statutes is amended to read:

9 346.65 (6) (a) 2. The court shall order a law enforcement officer to seize a motor
10 vehicle owned by a person whose operating privilege is revoked under s. 343.305 (10)
11 or who commits a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a)
12 or (b) or 940.25 (1) (a) or (b) if the person whose operating privilege is revoked under
13 s. 343.305 (10) or who is convicted of the violation has 3 or more prior suspensions,
14 revocations or convictions ~~within a 10-year period~~ that would be counted under s.
15 343.307 (1).

16 **SECTION 25.** 346.65 (6) (a) 2m. of the statutes is amended to read:

17 346.65 (6) (a) 2m. A person who owns a motor vehicle subject to seizure,
18 equipping with an ignition interlock device or immobilization under this paragraph
19 shall surrender to the clerk of circuit court the certificate of title issued under ch. 342
20 for every motor vehicle owned by the person. The person shall comply with this
21 subdivision within 5 working days after receiving notification of this requirement
22 from the district attorney. When a district attorney receives a copy of a notice of
23 intent to revoke the operating privilege under s. 343.305 (9) (a) of a person who has
24 2 or more convictions, suspensions or revocations ~~within a 5-year period~~, as counted
25 under s. 343.307 (1), or when a district attorney notifies the department of the filing

1 of a criminal complaint against a person under s. 342.12 (4) (a), the district attorney
2 shall notify the person of the requirement to surrender all certificates of title to the
3 clerk of circuit court. The notification shall include the time limits for that surrender,
4 the penalty for failure to comply with the requirement and the address of the clerk
5 of circuit court. The clerk of circuit court shall promptly return each certificate of title
6 surrendered to the clerk of circuit court under this subdivision after stamping the
7 certificate of title with the notation "Per section 346.65 (6) of the Wisconsin statutes,
8 ownership of this motor vehicle may not be transferred without prior court approval".
9 Any person failing to surrender a certificate of title as required under this
10 subdivision shall forfeit not more than \$500.

11 **SECTION 26.** 346.65 (6) (d) of the statutes is amended to read:

12 346.65 (6) (d) At the hearing set under par. (c), the state has the burden of
13 proving to a reasonable certainty by the greater weight of the credible evidence that
14 the motor vehicle is a motor vehicle owned by a person who committed a violation of
15 s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25 (1) (a) or (b) and,
16 if the seizure is under par. (a) 1., that the person had 2 prior convictions, suspensions
17 or revocations ~~within a 10-year period,~~ as counted under s. 343.307 (1) or, if the
18 seizure is under par. (a) 2., 3 or more prior convictions, suspensions or revocations
19 ~~within a 10-year period,~~ as counted under s. 343.307 (1). If the ~~owner of the motor~~
20 ~~vehicle proves by a preponderance of the evidence that he or she was not convicted~~
21 ~~of a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25~~
22 ~~(1) (a) or (b), or, if the seizure is under par. (a) 1., that he or she did not have 2 prior~~
23 ~~convictions, suspensions or revocations within a 10-year period as counted under s.~~
24 ~~343.307 (1) or, if the seizure is under par. (a) 2., 3 or more prior convictions,~~
25 ~~suspensions or revocations within a 10-year period as counted under s. 343.307 (1)~~

1 state fails to meet the burden of proof required under this paragraph, the motor
2 vehicle shall be returned to the owner upon the payment of storage costs.

3 **SECTION 27.** 940.09 (1d) of the statutes is amended to read:

4 940.09 (1d) If the person who committed an offense under sub. (1) (a) or (b) has
5 2 or more prior convictions, suspensions or revocations ~~in a 10-year period~~, as
6 counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed
7 regarding the immobilization or seizure and forfeiture of a motor vehicle owned by
8 the person who committed the offense or the equipping of a motor vehicle owned by
9 the person with an ignition interlock device.

10 **SECTION 28.** 940.25 (1d) of the statutes is amended to read:

11 940.25 (1d) If the person who committed the offense under sub. (1) (a) or (b)
12 has 2 or more prior convictions, suspensions or revocations ~~in a 10-year period~~, as
13 counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed
14 regarding the immobilization or seizure and forfeiture of a motor vehicle owned by
15 the person who committed the offense or the equipping of a motor vehicle owned by
16 the person with an ignition interlock device.

17 **SECTION 29. Initial applicability.**

18 (1) This act first applies to offenses committed on the effective date of this
19 subsection, but does not preclude the counting of other violations as prior
20 convictions, suspensions or revocations for purposes of administrative action by the
21 department of transportation, sentencing by a court or revocation or suspension of
22 operating privileges, except that it does preclude the counting of offenses that
23 occurred before January 1, 1989, as prior convictions, suspensions or revocations.

24 **SECTION 30. Effective date.**

